

State Board of Equalization
OPERATIONS MEMO
For Public Release

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SUBJECT: Procedures for Releasing or Modifying a Notice of Levy

I. PURPOSE

The following are guidelines for releasing or modifying a Notice of Levy (levy). The implementation of the following procedures will promote consistency among district offices and Headquarters' sections when releasing or modifying levies.

II. GENERAL

The Board of Equalization (BOE) compliance staff are responsible for equitably and uniformly enforcing the provisions of various business taxes and fee laws and regulations. It is the BOE's policy to seek voluntary compliance before taking summary collection action.

A Notice of Levy, form BOE-425-LA, is a collection tool used when a taxpayer has not voluntarily resolved a liability after it becomes due and payable. The levy is used to collect the taxpayer's interest in or right to money controlled by the taxpayer or a third party. Funds held in a joint bank account are presumed to be community property (Probate Code section 5305(a)) and subject to levy. To reach community property interests, the BOE attaches a spousal affidavit to the Notice of Levy. Levies are most commonly served on financial institutions (banks), but can also be served on merchant credit card processors, stock trading companies, third parties (to attach the taxpayer's commissions), tenants (to attach rents payable), or third-party customers (for accounts payable). The money remitted to the BOE pursuant to a levy represents money the entity would have otherwise owed and paid to the taxpayer.

Generally, a financial institution served with a levy will hold levied funds for ten (10) days from the date it receives the levy before remitting the funds to the BOE. The assigned collector will mail a copy of the levy and the BOE-425, *Exemptions from the Enforcement of Judgments*, to the taxpayer ten (10) calendar days after service of the levy on the financial institution. This period should provide sufficient time for a financial institution to receive and process the levy and allow for any mailing or levy processing delays that may occur. The Automated Compliance and Management System (ACMS) prints and tracks the BOE-425-LA, *Notice of Levy*, and the BOE-425, *Exemptions from the Enforcement of Judgments*.

III. LEVY RELEASE PROCEDURE

A. Reasons to Release or Modify a Notice of Levy

There are many reasons to consider the release or the modification of a levy. The BOE will release a levy when the taxpayer remits the tax, interest, and penalty in full with certified funds (cash, cashiers check, or money order). The following examples illustrate some situations where the BOE will release or modify a levy. The list is not all-inclusive and requests to release or modify the levy should be reviewed on a case-by-case basis.

- (1) The levy is served during a bankruptcy while the automatic stay is in effect or after a bankruptcy where the liability was subject to discharge.
- (2) Levied funds are exempt pursuant to the United States Code (USC) or the California Code of Civil Procedure (CCP) as notated on the BOE-425.
- (3) Delinquent or amended returns have been accepted and processed that will reduce or eliminate the liability.
- (4) The liability that remains due is less than the amount of the levy.
- (5) The BOE determines that the funds attached by the levy are not the taxpayer's funds and are not community property.
- (6) The BOE erroneously served a levy upon a corporate officer's bank account for a corporate liability when a dual determination has not yet been billed.
- (7) The BOE determines that the levy is creating a significant financial hardship for the taxpayer.
- (8) The release of the levy is deemed appropriate by the supervisor or lead.

When BOE compliance staff determines a levy should be released or modified, staff will send a BOE-465-F, *Release/Modify Notice of Levy* to the financial institution. This notice is printed and tracked in ACMS. In all cases, levy releases should be consistent with BOE policies. Staff will document the reason for the levy release in ACMS.

B. Third-Party Claims

CCP section 688.030 provides that the debtor be entitled to the same exemptions to which a judgment debtor is entitled when a levy is issued by an agency of the state for the collection of a liability pursuant to any provision of the Revenue and Taxation Code (R&TC). CCP section 688.030(a)(2) further provides that a third person may claim ownership to levied property. A third-party claim must be filed with the agency that issued the notice of levy. In addition, a properly executed third-party claim must conform to the requirements outlined in CCP section 720.130. It must be executed under oath and should contain the following information:

- (1) The name of the person making the claim.
- (2) A California address where service by mail can be made on the person making the claim.
- (3) A description of the property in which an interest is claimed.
- (4) A description of the interest claimed, including a statement of the facts upon which the claim is based.
- (5) An estimate of the market value of the interest claimed.

Based upon CCP section 720.130(b), the claim must also include a copy of any writing upon which the claim is based. This can be evidence presented by the claimant to support their ownership to the funds in a deposit account. However, at a court hearing on the third-party claim, the court, at its discretion, may exclude from evidence any writing that was not attached to the third-party claim.

A properly executed third-party claim is heard and determined in the superior court within the county where the levied property is located. In most cases, the BOE's legal staff, not the third party claimant, will file the third-party claim petition. The claim is time-sensitive since the claimant must file the third-party claim with the BOE prior to the bank remitting the funds to the BOE. If the funds are remitted to the BOE before the claimant files a third-party claim, the claimant's only recourse is to file a claim for refund with the BOE.

BOE compliance staff will consult their immediate supervisor when served with a third-party claim. The supervisor will review the claim to ensure that it conforms to the applicable provisions of the CCP section 720.130. The claim and any supporting documentation must be forwarded to the Litigation Division in the BOE's Legal Department and the following steps will be taken:

- (1) Notification of receipt of the third-party claim will be sent via email to the Assistant Chief Counsel in the Litigation Division with a copy to the program area division chief, administrator, and principal compliance supervisor.
- (2) The third-party claim will be faxed or scanned and emailed to the Assistant Chief Counsel of the Litigation Division.
- (3) A hard copy should follow via inter-office mail to the Litigation Division, MIC 82, Attn.: Assistant Chief Counsel.
- (4) BOE staff will document these actions in ACMS.

The assigned collector should contact the financial institution where the levy was served and request that the funds be held pending review of the third-party claim. The attorney in the Litigation Division that is assigned to the case will promptly determine if a third-party claim legal proceeding should be initiated, or if the third-party claim is valid. If the claim is valid, the

litigation attorney will advise the collector to release the levy. The collector may only release the levy when it is determined that the funds do not belong to the taxpayer.

C. Claims of Exemption

If the taxpayer claims that he or she is entitled to an exemption under sections of the CCP or the USC, the collector will instruct the taxpayer to file a claim of exemption form if the applicable statute requires it. The taxpayer, or a person acting on behalf of the taxpayer, may file a claim of exemption. In cases of community property, a taxpayer's spouse may also file a claim of exemption. The taxpayer may obtain the appropriate Claim of Exemption forms and the dollar amounts of exemptions from enforcement of judgments at www.courtinfo.ca.gov.

A claim of exemption must conform to the provisions of CCP section 703.520. The claimant must file a claim within ten (10) days after the date the notice of levy is served on the tax debtor. The claim must be signed under oath, and contain the following information:

- (1) The name and mailing address of the claimant so that service of the notice of opposition can be made on the claimant.
- (2) The name and the last known address of the taxpayer (judgment debtor) referenced on the notice of levy if the claimant is not the taxpayer (judgment debtor).
- (3) A description of the property claimed to be exempt. If an exemption is claimed pursuant to section 704.010 (motor vehicles) or 704.060 (tools), the claimant shall describe all other property of the same type (including exempt proceeds of property of the same type) owned by the judgment debtor alone or in combination with others on the date of levy and identify the property, whether or not levied upon, to which the exemption is to be applied. If an exemption is claimed pursuant to subdivision (b) of section 704.100 (insurance policies), the claimant shall state the nature and amount of all other property of the same type owned by the judgment debtor or the spouse of the judgment debtor alone, or in combination with others on the date of levy.
- (4) A financial statement if required by CCP section 703.520. The financial statement must show that the levied property is necessary for the support of the tax debtor, their spouse, and their dependents. The financial statement must include all sources and amount of earnings and assets of the tax debtor, their spouse, and their dependents. It must also show their outstanding obligations. The financial statement must be signed under penalty of perjury.
- (5) A citation of the provision or statute upon which the claim is based.
- (6) A statement of the facts necessary to support the claim.

If the tax debtor contacts the BOE and claims an exemption within the ten (10) days but they have not filed an exemption request within that period, BOE staff will allow the tax debtor another three (3) days to give the tax debtor an opportunity to file the exemption. Staff will communicate with the bank to hold the funds an additional three (3) days pending a review of

any potential filed claim of exemption. Like a third-party claim, a claim of exemption must be filed prior to the bank remitting the funds to the BOE. If a claimant files a claim of exemption subsequent to the BOE receiving the levied funds, the claimant's only recourse is to file a claim for refund with the BOE.

Like a third-party claim, the BOE compliance staff will consult their immediate supervisor if the tax debtor claims the levied funds are subject to exemption. The supervisor will review the tax debtor's claim and supporting documentation to determine if the claim of exemption is valid or requires further examination by the Litigation Division. If it is determined that the funds are not exempt, the supervisor will ensure that the claim and any supporting documentation are forwarded to the Litigation Division.

If the filed claim meets the requirements specified in CCP section 703.520, compliance staff will follow the guidelines referenced in section III B of this operations memo and forward the claim to the Litigation Division in the BOE's Legal Department. All actions should be clearly documented in ACMS.

D. Levies on Social Security Benefits

For specific instructions regarding how to handle these release issues, see Operations Memo No. 1178, *Levy Policy on Social Security Deposit Accounts*.

E. Claims of Financial Hardship

BOE compliance staff are also responsible for reviewing any claims of financial hardship. Compliance staff must be aware of the taxpayer's health and welfare if the taxpayer claims that the levy will create irreparable harm. The outcome of the compliance staff's analysis of the taxpayer's financial condition may require the levy to be modified. Early resolution affords the taxpayer an opportunity to make other arrangements to resolve their liability, such as entering into a payment arrangement with the BOE.

A completed BOE-403-E, *Individual Financial Statement*, along with supporting documentation must be submitted by the taxpayer to determine whether a modification of the levy is appropriate. Compliance staff must promptly evaluate the financial statement and documentation submitted by the taxpayer before modifying the levy. Analysis of the financial information will disclose the taxpayer's true complete financial condition and provide a basis to make a decision whether the taxpayer has the ability to pay in full. If the collector recommends that the levy be modified, the collector will obtain the approval from the supervisor who is delegated the responsibility to review the financial documentation. If possible, the reviewing supervisor should not be the assigned collector's direct supervisor. The decision should be clearly documented in ACMS. In addition, the collector will also enter comments in ACMS concerning the asset information based upon the collector's findings.

However, if the review of the taxpayer's financial condition reveals the taxpayer has assets to pay the liability in full without creating a significant hardship, the collector will inform the taxpayer that the levy will not be modified or released. Staff and the reviewing supervisor will enter appropriate comments in ACMS concerning the discussion with the taxpayer.

Pursuant to R&TC section 7094, the Taxpayers' Rights Advocate (TRA) has the authority to release a levy up to \$1,500 if the collection action will result in irreparable loss to the taxpayer. This function of the TRA is recognized as an extension of the existing summary collection review process.

IV. MISCELLANEOUS

Other than the authority of the TRA to release a levy as set forth in R&TC section 7094, the BOE office or headquarters (HQ) section serving the levy retains the responsibility for determining if a levy should be released or modified. If a taxpayer that has been served with a levy goes into any BOE office other than the office that served the levy, the contacted BOE office will immediately notify the BOE office or HQ section responsible for the levy and both offices will attempt to resolve the account while the taxpayer is in any district or branch office. The collector that issued the levy or a collection supervisor will determine if it is appropriate to release or modify the levy, and document the facts of the case in ACMS.

V. OBSOLESCENCE

This Operations Memo will become obsolete when the information contained herein is incorporated into the appropriate manuals.



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